1944

File No. Cotton Cloth II
44

Legal Department

B **BRANCH**

Subject:— Rules and Notifications under the Bombay Cotton Cloth Dealers Licensing Order 1943

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P. 12

1944

File No. Cotton Cloth II/44

116-B

Gen. 194 e.

Office of the R.L.A

The amendment proposed in paragraph 2 of the F.D. (Supply) office note at page 5 ante, as amended, is in order. The file referred to in paragraph 2 of the said note was returned to F.D. (Supply) under R.L.A's U.R. No. 115 dated 6th January 1944.

Id/- P.N.M.
26-1-1944.
Remembrancer of Legal Affairs.

U.R. to F.D. (Supply), No. 26-Confl., dated the 27th January 1944.

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Cotton Cloth Dealers Licensing Order, 1943.

Draft Clause 6A.

6A. If a licence granted under this Order is defaced, lost or destroyed, the Licensing Authority may, after making such inquiry as it deems necessary, issue a duplicate licence on payment of a fee of Rs. -/8/-, in the case of a hawker and of Rs. 1/-, in the case of any other dealer.

EVY. 16/7.

Office of the R.L.A.

It would not be proper under clause 8A of the Bombay Cotton Cloth Dealers Licensing Order, 1943 to cancel a whole class of licenses, namely, wholesale licensees who came in business in the year 1943. The intention of clause 8A is that each license should be considered on its merits and cancelled individually.

2. The object can be achieved if the said Order is amended by inserting the words "or a class of licenses" after the word "license" where it occurs for the first time in clause 8A.

Sd/-

Remembrancer of Legal Affairs.

U.R. to F.D. (Supply), No. 3723, dated 24th May 1944.

EVY. 16/7.

Office of the R.L.A.

A certain firm, Messrs. Hiralal Limited, whose license has been cancelled under clause 8A of the Bombay Cotton Cloth Dealers Licensing Order, 1943, has applied for permission to export 30 bales of cloth to Australia out of frozen stocks, which export has been recommended by the Textile Commissioner. A new firm which does not hold a license under the said order has been granted export quota by the Export Trade Controller. This firm does not want to do any business in Bombay or in India, but merely wants to take advantage of the export quota granted to it and exportcloth from Bombay to East Africa. On these facts, the following 3 question are referred for consideration of the R.L.A:-

(1) If the license of a cloth dealer who is also an exporter is suspended or cancelled, can be export some portion of his stock of cloth?

(2) If the stocks of such a dealer are frozen and if Government release a portion of such stocks, can the dealer export the portion so released, unless his license is restored to him?

(3) Can any person, who has not been granted a license under the said Order, export cottong goods out of India, even if the Export Trade Controller gives him an export quota?

2. The Bombay Cotton Cloth Dealers Licensing Order, 1943, prohibits under clause 3, save as thereinafter provided, any dealer from selling cloth except under and in accordance with the conditions of a license granted by the licensing authority. This Order is made under sub-rule (2) of rule 81 of the Defence of India Rules and falls under clause (a) of the said sub-rule (2). Proviso (i) added to sub-rule (2) on 18th May 1943, (Provides that no order made whether before, on or after 18-5-43) in exercise of the powers conferred by clause (a) of that

sub-rule on a provincial Government shall have effect so as to prohibit or restict the export from any place in the Province to any -lace outside India of articles or things. The proviso puts a limitation on the power of the Provincialxfix Government to issue orders under clause (a) of sub-rule (2) of ru 81 and in virtue of this proviso no order made by the Provincial Government under that clause can have the effect of prohibiting or restricting the export from any place in the Province to any place outside India of articles or ~~th~~ things with which such order deals. The requirement of a license under clause (3) of the Bombay Cottong Cloth Dealers Licensing Order, 1943, will not therefore have the effect of prohibiting the export of cloth, if the export is to any place outside India. The said requirement will have operation only in respect of sale of cloth and export thereof to any place within India.

3. The replies to the three questions raised therefore are:-

(1) If the export of the portion of his stock of cloth is outside India, he can do so even if his license is ruspended or cancelled;

(2) He can export the portion of his stock released by Government even if the license is not restored to him, if the export is outside India;

(3) The person can export cottong goods out of India even if he has not been granted a license under the said Order.

Id/-
P.N.M.
5-6-44.

Remembrancer of Legal Affairs.

U.R. to F.D. (Supply), No. 4026, dated the 6th June 1944.

EVY. 16/7.

Office of the R.L.A.

Clause 3 of the Bombay Cotton Cloth Dealers Licensing Order, 1943, provides that save as thereinafter provided no dealer shall sell, or store for sale, cotton cloth except under and in accordance with the conditions of a license granted by the Licensing authority. Since no license is required under the said Order for the purchase of cloth, the three points by the Provincial Textile Controller do not survive.

Sd/-

Remembrancer of Legal Affairs.

U.R. to F.D.,(Supply), No. 4666, dated the 3rd July 1944.

KVY.
16/7.

Office of the R.L.A.

The Bombay Cottong Cloth Dealers Licensing Order, 1943, is made under sub-rule (2) of the rule 81 of the Defence of India Rules and is relatable to clause (a) of that sub-rule. Clause (3) of the Order prohibits person from selling or storing for sale cloth except under and in accordance with the conditions of a license granted by the licensing authority. Now the proviso to sub-rule (2) of rule 81 provides inter alia that no order made whether before, on or after the 18th May 1943 in exercise of the powers conferred by clause (a) of the sub-rule on a Provincial Government shall have effect so as to prohibit or restrict the export from any place in the Province to any place outside India of articles or things. In virtue of this proviso it would be open to any person to export articles or things from any place in the Province to any place outside India and in so exporting no order made under rule 81(2)(a) by the Provincial Government would come in his way. In other words any such order made by the Provincial Government in respect of any articles or things would not bind him if such articles or things are to be exported to a place outside India. Since the Province may not do indirectly what it cannot do directly, the order passed by the Provincial Government requiring person to take out a license for selling or storing for sale cloth would not bind person exporting cloth outside India even if the sale or storing for sale of such cloth has taken place within the limits of the Province and no license would consequently by required to be taken out by the under clause 3 of the Cotton Cloth Dealers Licensing Order. In view of the express provisions of the proviso (1) to sub-rule (2) of rule

81 referred to ~~mk~~ above it would not it seems be feasibl to effect any amendment in clause 3 of the Order so as to bring persons exporting cloth outside India within its scope. The necessary control is however exercisable if necessary by the Central Government which has power to make an order under rule 81(2)(a) free from the disability contained in the proviso referred to above.

Id/- P.N.M.
20-7-44.

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply), No. 5161, dated the 21st July 1944.

EVI. 16/7.

Office of the R.L.A.

The addition of a condition as in the draft at page 23 is proposed by F.D. (Supply) to achieve what the Supply Commissioner sets out on page 13 ante. The file deals with the case of person exporting cloth to place outside India, and "A" of the Supply Commissioner. Commissioner's note at page 13 refers to such export. As already explained in R.L.A.'s opinion No. 5161, date the 21st July 1944, in virtue of the proviso (1) to sub-rule (2) of rule 81 of the Defence of India Rules, the Bombay Cottong Cloth Dealers Licensing Order, 1943. passed by the the Provincial Government requiring persons to take out a license for selling or storing for sale cloth would not bind person exporting cloth outside India and no license would consequently be required to be taken out by them under clause 3 of the said order. There would be no question therefore of inserting a condition in a license given to an exporter that he should carry on the business only of exporting piece-goods or yarn out of India or any other condition.

Id/- P.N.M.
28-7-44.

Remembrancer of Legal Affairs.

U.R. to F.D. (Supply), No. 80-P-Confl., dated the 29th July 1944.

EVY. 16/7.

Office of the R.L.I

Under sub-rule (2) of rule 81 of the Defence of India Rules it is open both to the Central Government and the Provincial Government to make an order providing for any of the matters referred to in that sub-rule. Under that sub-rule the Central Government has passed an order called the Cotton Cloth and Yarn (Control) Order, 1943, under clause 10 of that Order the Textile Commissioner has been given power to specify inter alia the maximum prices, ex-factory, wholesale and retail, at which any class or specification of cloth or yarn may be sold. Under that clause the Textile Commissioner has also power to specify the markings to be made by the manufacturers and dealers on any class or specification of cloth or yarn, manufacturer or dealer is prohibited from selling or from offering to sell any cloth or yarn at a price higher than the maximum price specified under clause 10. Clause 13 of the Order Provides that where the Textile Commissioner has specified under clause 10 the marking to be made, and the time and manner of making them, in respect of any class or specification of cloth or yarn every manufacturer of and dealer in, such cloth or yarn shall cause the markings to be made thereon at the time, and in the manner, specified by the Textile Commissioner. Clause 15 gives power to the Textile Commissioner to exempt any cloth or yarn, or any class of cloth or yarn, from all or any of the provisions of clauses 13 and 14. Clause 15-B enables the Provincial Government or such authority as may be notified by them in that behalf, to fix the ex-factory maximum price for the purpose of the special markings under clause 15aA in respect or any type

manufactured or so sold by them and the time and manner of making those markings.

Under clause 12 of that order a

of cloth for which such price has not been fixed by the Textile Commissioner and for hand-printed cloth. Clause 18-A regulates the sale of cloth by a manufacturer. Sub-clause (d) of clause 19 empowers the Textile Commissioner to direct any manufacturer or dealer to sell to such person as he may specify such quantities of cloth or yarn as he may specify at such prices as may have been fixed under sub-clause (b) of clause 10; while sub-clause (e) of that clause empowers him to direct any manufacturer or dealer not to sell or deliver any cloth or yarn except to such person as he may specify. It would be seen from the above provisions that under the Cotton Cloth and Yarn (Control) Order, 1943, the power to specify the maximum prices of cloth and the markings to be made by the manufacturers and dealers on any class or specification of cloth manufactured of sold by them and for regulating the sale of such cloth is given to the Textile Commissioner It is true that under clause 15-B power has been given to the provincial Government or such authority as it may notify but that is only for the <u>fixing of ex-factory maximum price</u> for the purpose of the special markings under clause 15-A in respect of any type of cloth for which the price has not been fixed by the Textile Commissioner and for hand-printed cloth. The proposed Order goes beyond the power, given to the Provincial Government under clause 15-B and would, therefore, come in conflict with the provisions of the Cotton Cloth and Yarn (Control) Order, 1943. Although under the provisions of sub-rule (2) of rule 81 of the Defence of India Rules it would be competent for the Provincial Government to pass such an order; it would be hardly desirable, in view of the possible conflict between the proposed order and the Cotton Cloth and Yarn (Control) Order, to make such an order. As pointed out in R.L.A.'s opinion No. 134, dated 7th January 1943 multiple control of the same subject, by authorities possessing concurrent but unco-ordinate jurisdiction,

jurisdiction, should in relation to the same cases or class of cases be avoided in the interest of the public as also of administration. F.D.(Supply) is therefore requested to take what action is necessary under clause 15-B of the Cotton Cloth and Yarn (Control) Order, in consultation if possible with the Textile Commissioner.

Id/- P.N.M.
11/9/44.

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply), No, 6389, dated the 12th September 1944.

EVY. 16/7.

Office of the R.L.A.

Revised drafts in place of the drafts at pages 27-30 are sent herewith.

2. The F.D.(Supply), should see whether the third draft satisfies its requirements as to the areas to which the order contained in its to apply - viz. the Cities of Bombay and Ahmedabad.

Id/- P.N.M.
8/12/44.

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply), No. 8682, dated the 9th December 1944.

EVY. 16/7.

Office of the Provincial Textil
Controller, Kala Chowki, Parel Road, Bombay,
1944.

ORDER.

No. : In pursuance of the Provisions of clause 9 of the Bombay Cotton Cloth Dealers Licensing Order, 1943, the Provincial Textile Controller, Bombay, hereby authorises the ~~xxxx~~ below mentioned officers to exercise the powers specified in the said clause within the area comprising the City of Bombay and the Bombay Suburban District.

1) Assistant Textile Controllers.
2) Textile Officers.
3) The Chief Textile Inspector
4) Senior Textile Inspectors
5) Textile Inspectors
6) The Senior Textile Supervisor, and
7) Textile Supervisors.

Provincial Textile Controller,
Bombay.

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Office of the Provincial Textile Controller, Kala Chowki, Parel Road, Bombay.

O R D E R.

No. : In pursuance of the Provisions of clause 11 of the Bombay Hand Printers Licensing Order, 1944, the Provincial Textile Conroller, Bombay, hereby authorises the below mentioned officers to exercise the powers specified in the said clause within the area comprising the City of Bombay and the Bombay Suburban District.

1) Assistant Textile Controllers
2) Textile Officers
3) The Chief Textile Inspector
4) Senior Textile Inspectors
5) Textile Inspectors
6) The Senior Textile Supervisor, and
7) Textile Supervisors.

Provincial Textile Controller,
Bombay.

Office of the Provincial Textile Controller, Kal Chowki, Parel Road, Bombay, 1944.

ORDER.

No. In pursuance of condition 7 of the license form in Schedule B to the order issued in Government Notification, General Department, No. 24/3, dated the 31st July 1942, the Provincial Textile Controller, Bombay, hereby authorises the following officers at Bombay and Ahmedabad, to exercise the power specified in the said condition within the limits of the Cities of Bombay and Ahmedabad respectively.

1) Assistant Textile Controllers.
2) Textile Officers
3) Chief Textile Inspector
4) Senior Textile Inspectors
5) Textile Inspectors.
6) Senior Textile Superviosrs
7) Textile Supervisers.

Provincial Textile Controller,
Bombay.

EVY. 16/7.